



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER M-345**

**Appeals M-9400220 and M-9400221**

**Regional Municipality of Ottawa-Carleton**



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## **NATURE OF THE APPEAL:**

These are two appeals brought under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Regional Municipality of Ottawa-Carleton (the Region) received two separate requests for access to the schedule of prices submitted by the successful bidders in tender number HC-0194-MS-96 which related to the sale of medical supplies to the Region. The record at issue in these appeals is a document entitled "Medical Supplies Tender - Schedule of Prices" which contains the unit prices submitted by one of the successful bidders. The Region decided to grant full access to the record to both requesters.

One of the successful bidders, (now the appellant) was notified of the Region's decisions to grant access and has appealed both determinations to the Commissioner's office. The appellant takes the position that its tender document be withheld from disclosure based on the third party exemption (section 10) contained in the Act.

Separate Notices of Inquiry were provided to the appellant, each of the original requesters and the Region. Representations were received from the appellant and the Region only.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

The appellant has claimed that section 10(1) of the Act applies to the record at issue. For the record to qualify for exemption under this provision, the party resisting disclosure, in this case the appellant, must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in sections 10(1)(a), (b) or (c) will occur.

The failure to establish any part of this test means that the exemption will not apply.

### **Part One of the Test**

Previous orders have found that unit pricing information qualifies as financial and/or commercial information. Accordingly, I find that part one of the test has been satisfied.

### **Part Two of the Test**

The second part of the test has two elements. First, it must be shown that the information was **supplied** to the Region and secondly, that it was supplied **in confidence**, either implicitly or explicitly.

In their representations, the Region and the appellant submit that the information was supplied to the Region. I agree.

I must now determine whether this information was supplied to the Region in confidence, either implicitly or explicitly.

It has been established in previous orders of the Commissioner's office that part two of the test requires the demonstration of a reasonable expectation of confidentiality on the part of a third party at the time the information was provided. It is not sufficient that the appellant had an expectation of confidentiality with respect to the information supplied to the Region. Such an expectation must have been reasonable, and must have an objective basis. The expectation of confidentiality may have arisen implicitly or explicitly.

The appellant submits that the information contained in the record was supplied to the Region with an expectation of confidentiality. In support of this position, the appellant indicates that his tender bid was provided to the Region in an envelope marked "private and confidential". Further, he submits that it is the Region's practice when opening tenders that only the total price, and not the unit prices, is disclosed to the public.

In its representations, the Region indicates that it did not intend to treat the complete package of tender information on a confidential basis. In support of this position, the Region has submitted a copy of the notice provided to each bidder which contained the terms and conditions of the tender. This document states, in part, that "Submissions in response to the Tender may become public information ..." and adds that letters of reference, insurance certificates and documents relating to bonding requirements will be treated as confidential. While there is no specific reference to the treatment of unit pricing information, the Region submits that even before the enactment of the Act, it followed a long-standing and consistent practice of granting full access to requests for unit pricing information.

In my view, it is reasonable to conclude that the Region does not treat unit price information in a confidential manner. Further, I find that the appellant's expectation of confidentiality was unreasonable, given the nature of the circumstances surrounding the tendering process.

On this basis, I conclude that the appellant has not established that the record was supplied to the Region in confidence, either explicitly or implicitly. Consequently, part two of the test has not been met.

Having found that the second part of the test has not been met, it is not necessary for me to deal with the third part of the test. The exemption provided by section 10 of the Act does not apply to the record at issue and it should be disclosed to each of the requesters.

**ORDER:**

1. I uphold the Region's decision to disclose the record at issue to the requesters.
2. I order the Region to disclose the record as described in Provision 1 of this order within thirty-five (35) days of the date of this order and not earlier than the thirtieth (30th) day following the date of this order.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Region to provide me with a copy of the record which is disclosed to the requesters pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_  
July 12, 1994